

**13-14a-2 Right of return on termination of retailing agreement -- Credit on return.**

- (1) Upon termination of all sales agreements in which the dealer has agreed to offer the products of the manufacturer or wholesaler for retail sale and to stock wholegoods and parts inventories as may or may not be required by the manufacturer or wholesaler, the retailer is entitled to payment or credit from the manufacturer or wholesaler for all new and unsold wholegoods and parts inventories held by the dealer on the date the agreement was terminated.
- (2)
  - (a) Except as otherwise provided in this section, the amount of payment or credit due for unsold and undamaged wholegoods is 100% of the original invoice price paid by or invoiced to the dealer, plus any freight charges paid by or billed to the dealer, less any volume, sales, or special discounts on the wholegoods previously paid to the dealer.
  - (b) The manufacturer shall bear the freight charges incurred by the dealer in shipping any wholegoods inventory to the manufacturer's choice of destination. The dealer is responsible for freight charges from the dealer's location to the wholesaler on inventory purchased from that wholesaler.
- (3)
  - (a) Payment or credit due to the dealer on wholegoods inventory that has been in the dealer's inventory for more than 36 months from the date of invoice may be adjusted downward from the original invoice price to cover demonstration or rental use. The amount of adjustment shall be agreed upon by the dealer and the manufacturer or wholesaler, but in no case shall the adjustment cause the value of the wholegood to go below the wholesale value listed for that equipment in the edition of the trade-in guide customarily used by dealers or if the equipment is not listed in the trade-in guide, the local retail auction price will prevail at the dealer's choice.
  - (b) If an agreement cannot be made on adjustment, the adjustment shall be submitted to arbitration under procedures approved by both the manufacturer and the dealer. The manufacturer shall pay the cost of the arbitration.
- (4)
  - (a) The amount of payment or credit due to the dealer for parts inventory is 100% of the current wholesale price of the parts listed in the manufacturer's or wholesaler's price book.
  - (b) The dealer is entitled to reimbursement for any handling or packaging incurred to return the parts inventory to the manufacturer or wholesaler in the amount of 5% of the currently listed wholesale price of the returned parts. The manufacturer or wholesaler shall bear the freight cost to return the inventory to their choice of destination.
- (5)
  - (a) New, unsold parts that are listed and priced in the manufacturer's or wholesaler's price book at the time of the termination of the agreement are eligible for return.
  - (b) Parts with superseded part numbers are eligible for return at 85% of the price listed for the superseding part number, if they meet the criteria of being new and unsold.
  - (c) Parts that have been deleted from the price book within the previous 24 months prior to termination of the sales agreement shall be repurchased at 50% of the last published price.
  - (d) Parts that are not eligible for return are:
    - (i) parts that are normally sold at retail in packages of two or more due to precision machining, such as piston rings or connecting rod bearing liners, if one of the parts is missing; and
    - (ii) any parts that are improperly identified.
  - (e) Package quantity between the dealer and the manufacturer or wholesaler will not be cause for rejection of a returned part.

- (f) Parts manuals, service manuals, and owners manuals that the dealer has purchased and held for resale at retail shall be repurchased at current wholesale cost.
- (6) Upon the payment or credit due to the dealer's account of the amounts required by this section, title to the wholegoods, attachments, and parts inventories is vested in the manufacturer or wholesaler and the manufacturer or wholesaler is entitled to possession of those items.
- (7) All credits due and the final payments to the dealer shall be made within 60 days of the date of shipment of the inventory back to the manufacturer or wholesaler.
- (8) Special tools for repair of the manufacturer's equipment that the dealer maintains or tools that the manufacturer requires the dealer to maintain shall be repurchased by the manufacturer upon termination of the agreement. The repurchase price shall be the fair market value, but may not be less than 25% of the replacement cost for a usable tool.
- (9) The manufacturer shall repurchase for fair market value:
  - (a) any sign that the dealer has purchased for the exclusive advertisement of the manufacturer's or wholesaler's product; and
  - (b) any computer or communication equipment the dealer has purchased for direct interface with the manufacturer or wholesaler.
- (10) In calculating the fair market value of any item the manufacturer or wholesaler shall repurchase under Subsection (9), the depreciation of the item may not exceed 10% a year for the useful life of the item, but may not go below 25% of the replacement cost.
- (11)
  - (a) A representative or agent of a manufacturer who does not stock inventory for resale or does not hold or anticipate holding title to any inventory is exempt from the repurchase obligations of this chapter.
  - (b) If a sales agreement is terminated, the manufacturer bears the responsibility to repurchase inventory sold by a manufacturer's representative or agent.

Amended by Chapter 317, 1995 General Session